IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 66

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,

Petitioners,

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS IN OPPOSITION

JAMES W. ARCHER,
1410 Bank of America Building
San Diego 1, California
Attorney for Respondents

WARD W. WADDELL, JR.
1410 Bank of America Building
San Diego 1, California
Of Counsel

TOPICAL INDEX

TABLE OF AUTHORITIES

Cases

Statutes

Text Authorities

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 998

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,

Petitioners,

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENTS IN OPPOSITION

THE QUESTION PRESENTED

The following question is presented:

Is a state court precluded from awarding damages for non-violent conduct found to be tortious under state law merely because the tortious conduct is also an unfair labor practice under

the National Labor Relations Act, in a case where the National Labor Relations Board has declined to exercise its jurisdiction?

The petitioners assert that five questions are involved in their petition for certiorari. These questions are for the most part alternative statements of the same question with, in some instances, an additional fact or an asserted fact included.

STATEMENT OF THE CASE

This case is here for the second time. The present petition involves an award of damages in the amount of $1,000.00 in favor of the respondents, a partnership operating a retail lumber business with eight employees, for conduct held illegal under state law and also conceded by petitioners to be illegal under the National Labor Relations Act.

The illegal conduct of the petitioners consisted of seeking by coercive means to compel the respondents to force their eight employees to join the petitioner unions, although none of the employees belonged to or desired to be represented by any of the petitioners.

In the prior proceeding this Court, in a decision rendered simultaneously with the decisions in *Guss* v. *Utah Labor Relation Board* (1957), 353 U. S. 1, 1 L. ed. 2d 601, and *Amalgamated Meat Cutters* v. *Fairlawn Meats* (1957), 353 U. S. 20, 1 L. ed. 2d 613, held that the California courts were without power to award respondents injunctive relief but remanded this case to the Supreme Court of California for its determination whether respondents were entitled to damages under state law. The California court reversed the decree granting the injunction, recognizing that it was without authority to grant injunctive relief, but

affirmed the award of the damages as being in accordance with state law.

The petitioners' statement of the facts of the case is inaccurate in the following particulars:

1. The respondents did not allege and the trial court did not find that the respondents were engaged in interstate commerce. The allegations and finding were simply to the effect that the business of the respondents affected interstate commerce.

2. The respondents in their complaint did not allege and the trial court did not find that the conduct of the petitioners was in violation of the Labor Management Relations Act or the National Labor Relations Act.

REASONS FOR DENIAL OF PETITION

A. *The decision of the California Supreme Court was in accordance with the decisions of this Court on the issues raised by the petition.*

This Court held in *United Construction Workers* v. *Laburnum Construction Corp.* (1954), 347 U. S. 656, 98 L. ed. 1025, that a state court is not prevented from awarding damages for tortious conduct merely because the tortious conduct is also an unfair labor practice under the National Labor Relations Act. The reasons are stated in the opinion in that case. The rule of the Laburnum case is sound and disposes of the present case.

In *International Association of Machinists v. Gonzales* and *International Union* v. *Russell*, decided May 26, 1958, this Court held that a possible award of back pay under the National Labor Relations Act and an award of damages to an employee by a state

court are not conflicting remedies, so that in the circumstances presented in those cases the employee could sue for damages, including loss of wages, despite the existence of a possible concurrent remedy afforded by the National Labor Relations Act. In the present case, of course, as in the Laburnum case, no compensatory relief is granted by the federal law to these respondents so that even if the case were one over which the National Labor Relations Board would exercise its jurisdiction, there could be no concurrent federal remedy.

There is absolutely no ground for granting the petition in this case unless this Court desires either to overrule the Laburnum case or to limit it so severely as to deprive it of all meaning or vitality.

This Court has ruled that the state courts can not grant injunctive relief to small employers, because the National Labor Relations Board could grant them similar relief, though it refuses to do so because their businesses are too insignificant from the national point of view. To go further, and hold that such enterprises can not even recover damages for the wrongs to which they are now especially exposed would be a monstrous reproach to the law and to our entire legal and judicial system.

B. *The petitioners have stated no valid reason why the decisions of this Court allowing state courts to award damages should not be applied in this case.*

The petitioners make a number of contentions why a writ of certiorari should be granted. Many of these contentions do not appear to raise any federal question and most of the rest appear to be an attack on the decision of this Court

in *United Construction Workers* v. *Laburnum Construction Corp.* (1954), 347 U. S. 656, 98 L. ed. 1025. Although the petitioners do not directly ask that that case be overruled, their petition is an attempt to get this Court to overrule it or limit its application in a manner inconsistent with its *rationale*. We will discuss the contentions of the petitioners briefly in the order in which they appear in the petition.

1. The first numbered point of the petitioners is an argument that the Laburnum case should be distinguished. Most of the grounds they give amount really to a belated argument against the Laburnum case itself.

First, the petitioners interpret the Laburnum case as applying only to *common law* torts and urge briefly that the tort in the present case was not one known to the common law. Apparently the petitioners place their reliance for this interpretation of the Laburnum case upon the use in that case of the word "traditional" (which petitioners italicize) in this Court's reference to "traditional state court procedures for collecting damages for injuries caused by tortious conduct." It is obvious that the word "traditional" applies to the word "procedures" and does not limit the type of "tortious conduct" for which the remedy could be afforded.

No reason for such a limitation is suggested and we submit that none exists. However, if the petitioners wish to ask this Court to limit the effect of the Laburnum decision by holding that it does not apply to damages for torts created by state statute and not based on the common law, they have chosen the wrong case to present that question. In California, which is a Code state, all proceedings involve statutes to some extent, and so necessarily does this one, but the principles upon which it is based are common law principles applying to all persons and not

regulating merely labor-management relations.

The basic proposition of state law on which the Supreme Court of California proceeded in determining the illegality of the conduct of the petitioners under the law of California is a common law principle which has been embedded in the Codes of California without change since the enactment of the Civil Code in 1872. (California Civil Code, Section 1708.) In the words of the Supreme Court of California, that principle is that "The law of this state imposes upon everyone the duty to abstain from injuring the person or property of another, or infringing upon any of his rights." (P. 67 of the appendix to the petition for certiorari.) An unprivileged interference with the business of another by picketing or otherwise has long been recognized in California to be a violation of this principle. *Imperial Ice Company* v. *Rossier* (1941), 18 Cal. 2d 33, 112 Pac. 2d 631; *Hughes* v. *Superior Court* (1948), 32 Cal. 2d 850, 198 Pac. 2d 885, affirmed, 339 U. S. 460, 94 L. ed. 985; *James* v. *Marinship Corp.* (1944), 25 Cal. 2d 721, 155 Pac. 2d 329, 160 A. L. R. 900; Restatement of Torts, Sections 766 et seq. This principle is applicable alike to labor unions and all other persons, as the cases cited show. The Rossier case and the Hughes case did not involve labor unions while the James case did. The cause of action found by the Supreme Court of California to exist, was, therefore, an ordinary common law tort, and the only question to be decided by the Supreme Court of California in passing upon the question of liability under state law was whether the petitioners were entitled to a special privilege removing them from the operation of this principle. In its opinion at a point commencing on line 7 of page 68 of the appendix to the petition for certiorari, the Supreme Court of California held that they were not, and the con-

clusion that the respondents were entitled to damages followed.

This is not, therefore, a case of a tort created solely by statute. Nor is it a case of a tort applicable solely to labor unions or of a liability based on laws or statutes relating to labor unions. It is a case in which the labor unions claim an exemption, applicable solely to labor unions, from ordinary principles of tort law applicable to everyone else. If it be true, as the petitioners contend, that the decision of the Supreme Court of California represents a change in the law of California, that change consists not in the creation of a new tort or a new principle of law applicable to labor unions, but rather in the removal of a privilege which labor unions once enjoyed from the ordinary operation of that law.

Thus, the contention of the petitioners that the tort was not a common law tort falls to the ground, even aside from their failure to show any authority for their proposition that the Laburnum case applies only to suits for damages arising out of common law torts.

As their second reason why the Laburnum case does not apply to the present case, the petitioners point out that the factual situation in that case, unlike this, involved physical violence. They do not assert that the holding of the Laburnum case was or should be restricted to cases involving such violence and appear to consider that the point is not of great importance, since they themselves state that the next point discussed by them is of "greater significance." Although the Laburnum case did involve violence and the opinion in that case so stated, the very cogent reasons it gave for the rule it announced are equally applicable to any tortious conduct, and the rule itself was not limited by the opinion to any particular type of tortious conduct.

In the recently decided case of *International Association of Machinists* v. *Gonzales*, this Court sustained an award of damages for conduct not involving violence.

The third and most important reason why petitioners urge that the Laburnum case should not be held to apply is that (they say) the present case involves a possibility of conflict with the policies of the National Labor Relations Act or with the determinations of the National Labor Relations Board. The reasons are stated diffusely but amount principally to the assertion that state courts may from time to time err in their appraisal of the facts or of the law, a danger present in all litigation. In effect they are arguing that other persons should be deprived of all effective remedies for serious wrongs committed by labor unions because of the bare possibility that some court may make a mistake in enforcing them against labor unions. In the present case the Board has declined to exercise its jurisdiction, thus eliminating any possibility of an actual conflict with either its orders or its determinations. Moreover, since the actions of the petitioners are clearly not protected by the Act, there can be no conflict with the policies of the Act. The petitioners suggest that in some case the Board might not find the activities of a union to be in violation of the Act and yet a court might award damages, but this would be wholly permissible under numerous decisions of this Court. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board* (1942), 315 U. S. 740, 86 L. ed. 1154, *International Union* v. *Wisconsin Employment Relations Board* (1949), 336 U. S. 245, 93 L. ed. 651; *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board* (1949), 336 U. S. 301, 93 L. ed. 691. The arguments of the petitioners are not that there is in the present case any conflict with an order of the Board or the

policies of the Act but that the principle of the case might, if applied in other situations, result in conflicts of the type they fear.

All of the argument of the petitioners on this subject of potential conflict would apply equally to the Laburnum case itself. The discussion of the petitioners on this subject is, therefore, a veiled plea that this Court choose the present case as a vehicle for overruling the Laburnum case.

2. The petitioners' Point 2 is an elaboration of the contentions made by them under Point 1, and principally consists of a further attack upon the basis of the Laburnum case itself. There is perhaps a suggestion that under the ruling of *Weber* v. *Anheuser-Busch, Inc.*, (1955), 348 U. S. 468, 99 L. ed. 546, the Laburnum case applies only after the tortfeasors have voluntarily ceased to inflict the wrongful injury. This is a distinction unknown to the law and is not even suggested by anything this Court said in the Anheuser-Busch case or the Laburnum case. In the Anheuser-Busch case this Court pointed out that this Court in the Laburnum case "sustained the state judgment on the theory that there was no compensatory relief under the federal Act and no federal administrative relief with which the state remedy conflicted." (348 U. S. at p. 477.)

3. Point 3 of the petitioners is merely an argument that the Supreme Court of California misinterpreted a decision of this Court. This contention we will not discuss since even if true it is no ground for certiorari.

4. Point 4 of the petition is subject to the same comment as Point 3.

5. Point 5 of the petitioners' argument consists principally of a contention that the mandate of this Court upon the prior

hearing in this case was violated by the Court below because: (a) it by implication required the Supreme Court of California to reverse the award the damages, which that court did not do; and (b) it required the state court to apply "existing state law" and was, therefore, violated when that court "substitute[d] a new and foreign concept" in attempting to evade what petitioners call the "principle of Federal preemption now well established in this field".

The petitioners are correct in pointing out that the award of damages was neither reversed or affirmed in this Court because, as they say, the basis upon which the California court acted was, in the view of this Court, unclear. If this Court had meant to hold that there could be no damages in any event on the record presented, the "basis" of the prior decision of the California court, whether clear or unclear, would have been immaterial and a reversal would no doubt have been ordered. The opinion of this Court disclosed an intention to assure the California court that a compulsion it may have thought binding upon it was not so binding. There was no indication of an intention to impose any new compulsion upon that court on the issue of damages.

The contention that the mandate required the state court to follow the state law as it was construed by that court at the time of its first decision is not based upon any specific statement in the order of this Court. We are unable to detect any implication of such a restriction in the mandate and are sure that this Court had no intention to impose it, for no legal principle could justify it.

This Point 5 of the petitioners' argument is not covered by the statement of questions presented.

CONCLUSION

For the foregoing reasons the decision of the court below was entirely in accord with the decisions of this Court on all questions suggested by the petition for certiorari. Those decisions were sound and the petitioners have advanced no valid reason for the issuance of certiorari. The petition should, therefore, be denied.

Respectfully submitted,

JAMES W. ARCHER
Attorney for Respondents

WARD W. WADDELL, JR.
Of Counsel.